Circuit Court for Caroline County
Case No. C-05-CV-21-000087

UNREPORTED**

IN THE APPELLATE COURT

OF MARYLAND*

No. 806

September Term, 2022

COUNTY COMMISSIONERS OF
CAROLINE COUNTY

v.

WOOD FARM, LLC

Wells, C.J.,
Shaw,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: May 23, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a declaratory judgment action filed in the Circuit Court for Caroline County. Appellant, County Commissioners of Caroline County (the "County"), appeals the denial of its motion to dismiss and the grant of summary judgment in favor of Appellee, Wood Farm, LLC ("Wood Farm"). The County presents the following rephrased questions for our review:[1]

1. Did the Circuit Court err in denying the County's motion to dismiss, concluding it had jurisdiction to consider Appellee's complaint for declaratory judgment?

2. Did the Circuit Court err in granting Wood Farm's motion for summary judgment, declaring the Planning Commission's motion for reconsideration was impermissible as a mere change of mind?

For reasons discussed below, we conclude there was no error, and we affirm.

BACKGROUND

Wood Farm owns two adjoining parcels of land, consisting of approximately 181 acres, along Log Cabin Road on the southeast side of Maryland Route 404 near Denton, Maryland (the "Property"). The Property is situated in two zoning districts, where sand, gravel, and mineral extraction and processing are permitted uses with a special use

[1] The County's original questions presented are as follows:

1. Was the declaratory judgment action precluded because the judicial review remedy provided under the Caroline County Code was exclusive?

2. Did the trial court lack jurisdiction because Wood Farm failed to await a final administrative decision and failed to properly exhaust its administrative remedies through judicial review?

3. Did the trial court err in finding that the Caroline County Planning Commission's November 10, 2021 Decision was a "mere change of mind"?

exception. On April 2, 2017, Wood Farm applied to the Caroline County Board of Zoning Appeals (the "Board") for a special use permit ("SUP") to operate a proposed facility on the Property. The Board approved Wood Farm's SUP on December 17, 2019, following the County's lifting of a moratorium on issuing new permits for "non-coal" surface mining operations and a lengthy appeals process.

A neighboring landowner appealed the Board's approval of Wood Farm's SUP, and on February 10, 2021, following a hearing, the Circuit Court for Caroline County affirmed the Board's approval. On November 18, 2020, while the SUP appeal was pending before the Planning Commission (the "Commission"), which is responsible for deciding county applications for final site plans of mineral extraction facilities, a hearing was held on Wood Farm's request for approval of its final site plan. Wood Farm made a presentation of its plan and addressed questions from the Commission and the public regarding concerns about the possibility of trucks stacking along Log Cabin Road, the nearby right-of-way owned by the State Highway Administration ("SHA"), safety pertaining to haul trucks entering and leaving the facility, the neighbors' wishes, and the County's obligations.

Regarding the SHA easement, testimony was presented by:

> Sean Callahan, Wood Farm's engineer, who explained the entrance to the Property would be "out of the SHA easement completely and [be] about 737 feet back from [Rte. 404]."
>
> Lacey Lord, a neighboring landowner, testified on behalf of the neighboring landowners that they understood "that [the] haul road with a special permit from the State can go closer than 700 feet. It should be able to go from my understanding as close as 200 feet. . . . from [] what I know I don't think that permit had been applied[.]"

> Ryan White, Director of the Caroline County Department of Public Works, explained that, based on a conversation with an SHA representative, "[i]t does not sound as if [SHA] will approve anything into that easement as far as haul trucks going into that easement."
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> Anne Ogletree, Wood Farm's counsel, further explained that Wood Farm "understood that even if it wasn't access denied it was there for safety purposes and the State was not going to allow us to cross it. . . . [Wood Farm] did not apply for a permit after having been told that."
>
> John Saathoff, neighboring landowner, disputed the notion that the SHA would not approve an entrance over its easement, stating the SHA "told [him] the exact opposite of what" SHA told Wood Farm and that "an application could be submitted to go there and will likely be approved."

The Commission considered a motion to table the decision on Wood Farm's site plan, and after debate, the Commission voted to approve Wood Farm's initial final site plan with thirteen conditions.[2]

[2] The thirteen conditions are as follows:

1. There will be no use of jake brakes or exhaust brakes on site or while entering or leaving the facility.
2. Should any Wood Farm dump trucks turn left from the facility onto Log Cabin Road they shall go no further south than Fleming Road.
3. There is to be no tailgate slamming.
4. The neighbors should designate a neighborhood "point person" to meet with the plant manager to discuss and attempt to resolve community issues.
5. No dump truck is to leave the facility as long as there is a school bus in sight on Log Cabin Road.
6. Hours of operation were to be stated – 5:30 am to 5:30 pm or dark, which ever first occurs Monday-Friday, and 6:30 am-noon on Saturday.
7. Trucks would be able to enter the facility at any time to prevent 'stacking' on Log Cabin Road, but there would be no loading before or after the stated hours of operation.
8. The number of trucks was not to exceed 100 per day.
9. The number of employees on site was not to exceed 15.
10. No more than 10,000 gallons of diesel fuel were to be stored on site. The tank was to be in a diked enclosure.

Following the approval, and based on discussions with neighboring landowners, Wood Farm incorporated limited amendments into its SUP and final site plan. Wood Farm's plan included two modifications: (1) a change in the location of the entrance onto Log Cabin Road and (2) a modified setback. At a hearing on June 9, 2021, Wood Farm submitted its amended SUP and final site plan to the Commission for approval and recommendation to the Board.

At the hearing, Wood Farm displayed the amended final site plan and was questioned by Commission members about the ability to gain access to the SHA's easement. After discussion, the Commission voted unanimously, 4-0, to recommend that Wood Farm proceed to the Board with its amended SUP. If approved by the Board, Wood Farm was to resubmit the final site plan to the Commission, incorporating any additional conditions specified by the Board.

On July 9, 2021, the County's Planning Director conferred with the SHA by email and determined that the SHA did not receive an application for a commercial entrance on its right-of-way from Wood Farm. The SHA official indicated that the agency would consider Wood Farm's facility entrance to be located on its right-of-way upon receipt of a request or application and if access safety requirements were met.

11. The centerline of the berm on the southern property line was to be 125 feet distant from the southern property line so as not to shade Mr. Jim Saathoff's crops.
12. The 200-foot setback on the east side of the property adjoining the former golf course (now owned by Wood Farm) would be reduced from 200 feet to 100 feet, preserving the 100-foot stream buffer from the perennial stream shown on page C-1018.
13. The Applicant had agreed to fence the relocated cemetery.

On July 14, 2021, the Commission met to determine whether the new information from the SHA would have impacted its June approval of Wood Farm's amended final site plan. Following deliberation, input from members of the Commission, the public, Wood Farm's counsel, and communication on Wood Farm's stance regarding returning to the original entrance, the Commission unanimously voted to recommend to the Board that it consider Wood Farm's addendum.

Wood Farm then submitted, to the Board, an application for modification of the previously approved SUP. On July 20, 2021, the Board approved Wood Farm's application, as amended, and referred the matter back to the Commission for approval of Wood Farm's final site plan. Once Wood Farm received the modified special use exception, they submitted an application for final site plan approval to the Commission.

The Commission convened a meeting on October 13, 2021, and members debated whether to reconsider its November 18, 2020, June 9, 2021, and July 14, 2021 decisions. After considering testimony and evidence, the Commission concluded Wood Farm's amended final site plan was the strongest option and most satisfied the neighbors' concerns. The seven-member Commission voted five-to-one to approve Wood Farm's final site plan as amended.

One month later, at a Commission meeting on November 10, 2021, member Jeffrey Jackson moved to reconsider and rescind the Commission's approvals issued on November 18, 2020, June 9, 2021, and October 13, 2021, regarding Wood Farm's final site plan. Mr. Jackson also moved that the Planning Director be instructed to require the performance of studies, per § 175.27.6 of the County Code, and that the Commission's decision be tabled

until such studies were completed. To support the motion, Mr. Jackson offered the following:

> The October 13, 2021 meeting was his first as a Commission member, and that he was "confused to the point where [he] called Ms. [Freeman] the next day and asked to sit down and have a meeting with her."
>
> The Commission failed to comply with several requirements of County Code § 175.27, which Mr. Jackson was not aware of. "That we're supposed to review the site plan and consider its impact and does it adhere to our comprehensive plan and is it in the spirit – does it meet our goals and operating – in our operation plan. We didn't do that at all."
>
> Mr. Jackson lacked all of the information to make an informed decision. "I don't even know what the other modifications in this plan are," and "I've met with Ms. [Freeman] a couple times, I find out other information."
>
> Mr. Jackson was unaware that the Commission had the ability to request a variety of modifications to the final site plan pursuant to County Code § 175.27. The Commission allegedly didn't have various studies that it could have requested, including for the "impact of this project would have on the surrounding area."

Ultimately, the motion was seconded, and the Commission's four members in attendance voted to approve the reconsideration. As a result, Wood Farm could not obtain any of the additional permits required by the State to proceed with developing its mineral extraction facility.

On November 22, 2021, Wood Farm filed a complaint for declaratory judgment in the Circuit Court for Caroline County. The County filed a motion to dismiss on December 23, 2021, and in response, Wood Farm filed its motion for summary judgment and opposition to the motion to dismiss. On January 28, 2022, the Circuit Court heard argument on the motion to dismiss. On February 16, 2022, the court issued an order and opinion denying the County's motion to dismiss.

On March 3, 2022, the County filed its answer to Wood Farm's complaint and an opposition to the motion for summary judgment. The County filed a counter-complaint on April 2, 2022, seeking declaratory judgment and requesting the Circuit Court find and declare the reconsideration as valid. On April 27, 2022, the County filed its motion for summary judgment on its counter-complaint. Soon after, the County filed its opposition to Wood Farm's motion to dismiss, and Wood Farm filed its opposition to the County's motion for summary judgment.

The Circuit Court heard argument on all open motions on May 13, 2022. On June 27, 2022, the court issued an opinion and order, granting Wood Farm's motion for summary judgment and denying the County's motion for summary judgment. The court's order declared that the Commission's vote on November 10, 2021, to reconsider its final approval of Wood Farm's amended final site plan was invalid and impermissible under state law as a "mere change of mind." Therefore, Wood Farm was entitled to judgment as a matter of law. The County timely filed this appeal.

STANDARD OF REVIEW

This Court reviews "a declaratory judgment that was entered as the result of the grant of a motion for summary judgment to determine whether that declaration was correct as a matter of law." *Covered Bridge Farms II, LLC v. State*, 210 Md. App. 535, 539 (2013) (citing *Maryland Agric. Land Pres. Found. v. Clagget*, 412 Md. 45, 61 (2009)). This Court views "'the record in the light most favorable to the non-moving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.'" *Clagget*, 412 Md. at 61 (quoting *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 140

(2007)). "If there is no dispute of material facts, then [this Court's] role is to determine whether the trial court was correct in granting summary judgment as a matter of law. . . . Whether summary judgment is properly granted as a matter of law is a question of law and therefore review of the granting of summary judgment is *de novo*." *Hines v. French*, 157 Md. App. 536, 549-50 (2004).

We review an "'agency's decision in the light most favorable to the agency,' since their decisions are *prima facie* correct and carry with them the presumption of validity." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (quoting *Anderson v. Dep't of Pub. Safety and Corr. Serv.*, 330 Md. 187, 213 (1993)). "In general, however, the reviewing court exhibits no such deference where it determines that the agency decision is based on an erroneous conclusion of law." *Priester v. Bd. of Appeals of Balt. Cnty.*, 233 Md. App. 514, 534 (2017) (citing *Catonsville Nursing Home, Inc.*, 349 Md. at 568-69). "[I]ssues concerning primary jurisdiction and exhaustion are treated like jurisdictional questions." *Maryland Reclamation Assocs., Inc. v. Harford Cnty.*, 468 Md. 339, 387 (2020). "'Whether a plaintiff must exhaust administrative remedies prior to bringing suit . . . is a legal issue on which no deference is due to the lower court[.]'" *Id*. (quoting *Falls Road Cmty. Ass'n v. Balt. Cnty.*, 437 Md. 115, 134 (2014)).

DISCUSSION

I. The Circuit Court did not err in denying the County's motion to dismiss.

The Declaratory Judgment Act, in Maryland Code (1974, 2006 Repl. Vol.), § 3-409(a)(1)-(3) of the Courts and Judicial Proceedings ("CJP") provides:

> [A] court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if: (1) An actual controversy exists between contending parties; (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

The purpose of the Act "is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." CJP § 3-402.

The statute provides that if another statute contains a "special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle." CJP § 3-409(b). Caroline County Code § 175-193 states, "[a]ny person aggrieved by any decision of the Board of Zoning Appeals, Planning Commission or County Commissioners may appeal the same to the Circuit Court of Caroline County within 30 days of the notification of the decision."

Based on the above, the County argues the Circuit Court did not have jurisdiction to hear Wood Farm's complaint for declaratory judgment and that Wood Farm sought improper interlocutory relief. Specifically, the County argues that Wood Farm's complaint was not ripe for judicial consideration because the Commission had not issued a final decision. The County contends that, at its November 2021 meeting, a decision was made to table the matter to allow the Planning Director to have traffic safety studies performed. The Director was instructed to report back to the Commission for its further consideration. Thus, there was no final agency decision. The County argues, further, that if there was a final decision, Wood Farm was required to first appeal the matter to the Circuit Court.

In opposition, Wood Farm argues its declaratory judgment action was properly before the circuit court because the Commission's approval on October 13, 2021 was a final agency action. That decision did not aggrieve Wood Farm and thus, there was no basis to seek a judicial review or other administrative relief. Appellees assert that the County's sole remedy from the Commission's October 13th decision was to seek judicial review in the circuit court. Instead, the Commission unlawfully reconsidered its decision. According to Wood Farm, the County's arguments are, effectively, that an agency can evade judicial review by simply "reconsidering" an otherwise lawful, final agency action.

The County relies on *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474 (2011) and asserts that *Renaissance* is "most analogous and instructive" to this case because the administrative and judicial review process provided by Caroline County Code § 175-193 is comparable to Howard County Code § 5(U). The County contends Wood Farm's complaint was not ripe, just as the complaint in *Renaissance* was not ripe, until "after the rendering of a final administrative decision." *Id*. at 490. Wood Farm argues the case at bar is distinguishable because here, the Commission issued its final approval on October 13, 2021, there was no straw vote, no decision to wait, and no intent to reconvene at a later date. The Commission's reconsideration in November was a completely separate action. We agree.

In *Renaissance*, a developer brought a declaratory judgment action in the Circuit Court for Howard County, challenging a landowner's standing to contest a decision by the Howard County Planning Board's approval of a site development plan before the Howard County Board of Appeals. 421 Md. at 477. The Board of Appeals deliberated on the

individuals' standing, and the board took an initial "straw vote", resulting in a two-to-two deadlock. *Id*. at 478-79. After returning from closed session, the board announced that it would not decide the issue and would reconvene a couple of weeks later, after new board members were confirmed and they had the opportunity to review the record. *Id*. at 479. The developer then filed a declaratory judgment action in the circuit court, arguing that the board's straw vote was final, as well as a subsequent motion for summary judgment. *Id*. at 479-80. Following a hearing, the circuit court granted the developer's motion for summary judgment. *Id*. at 481. On appeal, this Court reversed the Circuit Court's judgment based on petitioner having standing and directed that the case be remanded to the Board of Appeals. *Id*. at 481-82.

The Supreme Court of Maryland[3] reversed this Court's decision and held "[i]t is obvious that the Board of Appeals' 2 to 2 'straw vote' was not a final administrative decision in light of the Board's planned action to reconvene later and re-vote." *Renaissance*, 421 Md. at 490-91. The Court then remanded the case with instructions to dismiss the declaratory judgment action. The *Renaissance* Court reasoned that:

> Renaissance's contention that the Board of Appeals' planned action would be unauthorized and improper also does not excuse or cure the lack of a final administrative decision and the failure to exhaust the administrative remedy. The appropriate time to argue that the decision of an administrative agency was not in accordance with the law is in a judicial review action, *after* the rendering of a final administrative decision.

Id. at 490.

[3] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

The opinion reiterated the Court's prior holding that "an agency order is not final when it is contemplated that there is more for the agency to do." *Kim v. Comptroller*, 350 Md. 527, 533-34 (1998) (citations omitted). For an agency decision "[t]o be 'final,' the order or decision must dispose of the case by deciding all questions of law and fact and leave nothing further for the administrative body to decide." *Willis v. Montgomery Cnty.*, 415 Md. 523, 535 (2010) (citations omitted). In explaining the purpose behind the finality rule, the Supreme Court of Maryland has held, it:

> [I]s to avoid piecemeal actions in the circuit court seeking fragmented advisory opinions with respect to partial or intermediate agency decisions. Not only would a contrary rule create the real prospect of unnecessary litigation, as a party choosing to seek review of an unfavorable interlocutory order might well, if the party waited to the end, be satisfied with the final administrative decision, but the wholesale exercise of judicial authority over intermediate and partial decisions could raise serious separation of powers concerns.

Driggs Corp. v. Maryland Aviation Admin., 348 Md. 389, 407-08 (1998).

The Caroline County Code § 175-122 states:

> The Planning Commission shall review the application and the Planning Director's report at a public meeting and approve, disapprove, or approve the plan subject to conditions. The Planning Commission may defer action to a subsequent Planning Commission meeting to allow further review. The Planning Director shall notify the applicant in writing of the Planning Commission's action.

Here, on October 13, 2021, following extensive testimony, review of the full public record, and due deliberation among the members, the seven-member Commission voted to approve the final site plan by a vote of five to one. Wood Farm's representatives were present at the meeting and notified of that final decision. The Commission's approval was not subject to conditions, nor was its action deferred for further review. As such, it was a

final agency action and the declaratory judgment action was properly before the circuit court.

II. The Circuit Court did not err in granting Wood Farm's motion for summary judgment.

The County argues the court erred in granting summary judgment. The County argues that the November 10, 2021 meeting, reconsidering its prior approval of Wood Farm's final site plan from October, was permitted under Maryland law and was not a "mere change of mind." The County asserts the Commission relied on mistaken and erroneous information. Specifically, the County argues Wood Farm provided false information about a safety concern regarding the SHA right-of-way, as well as the possibility of pulling the amended site plan to change the property entrance location. The County argues the approval of the final site plan did not conform to relevant law because the Commission failed to consider all of the information provided and did not explicitly state the reasons for approval. Lastly, the County asserts the October final approval was the product of surprise and mistake because a new member on the Commission was unaware of provisions allowing for modifications to the final site plan.

In opposition, Wood Farm argues the Commission's reconsideration and rescission on November 10, 2021 was an illegal and impermissible change of mind, not based in law or as a result of fraud, surprise, mistake, or inadvertence. Wood Farm asserts the Commission considered all the information and evidence and properly approved the plan on October 13, 2021, as required under the County Code.

The Supreme Court of Maryland held that reconsideration of an agency decision is permitted under Maryland law. *Calvert Cnty. Plan. Comm'n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301 (2001). In *Howlin*, the Calvert County Planning Commission approved an application for resubdivision on the belief that all residents of the subdivision consented to the resubdivision, which was a regulatory prerequisite. *Id*. at 307. Following complaints to the Commission from several residents that they had not consented, the Commission rescinded its approval and scheduled a hearing to reconsider the matter. *Id*. at 308. Relying on *Schultze v. Montgomery Cnty. Plan. Bd.*, 230 Md. 76 (1962), the Court in *Howlin* makes clear that a statute expressly permitting reconsideration is not necessary:

> An agency, including a planning commission, not otherwise constrained, may reconsider an action previously taken and come to a different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different factual situation exists that justified the different conclusion. What is not permitted is a "mere change of mind" on the part of the agency.

Id. at 325.

This Court has further expounded on the meaning of a "mere change of mind":

> When a grant of reconsideration is not based on one of the authorized grounds, it may be invalid as a mere change of mind. If, on the other hand, there is a legitimate basis for reconsideration, the subsequent reversal of the agency's previous decision ordinarily will not be said to have been a mere change of mind.

Cinque v. Montgomery Cnty. Planning Bd., 173 Md. App. 349, 364 (2007).

The record in the present case, does not support the County's claims that the Commission's approvals on November 18, 2020, and June 9, 2021, were based on mistaken and erroneous information about the SHA right-of-way. The Commission was informed

of the SHA right-of-way issue as early as November 2020, including the conflicting information from multiple parties. Parties on both sides testified that they had been given differing information from the SHA about whether it would approve an entrance application to cross its easement if one was submitted. The Commission was aware that Wood Farm had not submitted an application to the SHA as early as November 2020. Although the Commission knew of the conflicting information, Wood Farm's final site plan was approved at the November 18, 2020, June 9, 2021 and October 13, 2021 meetings.

The Commission's final approval in October 2021 was not the product of intimidation by Wood Farm, amounting to a mistaken belief. While it's true the "threat" to pull the application request for the amended site plan approval and go back to the previous facility entrance location was stated by Wood Farm's counsel, the statement did not amount to coercion and nothing in the record indicates any concerns were expressed by Commission members or Commission legal counsel.

The argument that Commissioner Jackson lacked knowledge of or misunderstood the County Code generally, or his duties and authority under the County Code specifically or the factual record related to Wood Farm's final site plan, is insufficient to invalidate the Commission's October decision. The subjective lack of knowledge and/or misunderstanding of one member of the Commission does not amount to fraud, surprise, mistake, or inadvertence warranting reconsideration. If Mr. Jackson lacked full

information about the factual record, he had a duty, under § 4.4 of the Rules of Procedure of the Commission[4], to abstain or recuse himself from the vote.

At the October 13, 2021 meeting, after years of planning and approvals, public hearings, and significant testimony and evidence regarding the site plan, the Commission approved Wood Farm's final site plan in accordance with its authority under the Caroline County Code. The Commission's reconsideration on November 10, 2021 fell outside of the permitted reasons under Maryland law and was "merely a change of mind."

A. Consideration of Facts

The County also argues the Commission failed to make any findings of fact or state the reasons for approving the final site plan application during the October 13, 2021 meeting. Essentially, the County asserts the Commission abdicated its duties under the Caroline County Code and its own rules of procedure.

The Caroline County Code states:

> The Planning Commission shall **consider** the information provided on the site plan and in the operations plan, the goals and objectives of the Comprehensive Plan, and the standards and requirements of this chapter.

Caroline County Code § 175-27.4 (emphasis added).

We do not agree. Based on a plain reading of the statute, the Commission was not required to make findings of fact and conclusions of law explicitly on the record and there is no evidence that the Commission did not consider all the final site plan information or

[4] Rules of Procedure of the Caroline County Planning Commission. § 4.4 – "In order to be eligible to vote a member will have attended all meetings or reviewed a transcript, minutes or tape recording of any meetings from which he/she was absent at which the matter was discussed."

Code requirements. The Commission minutes from all meetings detailed the process of approval. Based on our review, we hold that the Commission properly fulfilled its duty by fully considering the information and it was in accordance with the County Code.

In sum, the Circuit Court did not err in denying the motion to dismiss, in granting the motion for summary judgment and in declaring the Commission's reconsideration as a mere change of mind.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.